MEDICAL LAW, ETHICS AND DELEGATION FOR NURSES

Part 2: Ethics

What is ethics? Ethics can have many definitions. Ethics involves making decisions and the conduct of a group. Ethics is concerned with establishing right from wrong actions. Ethics is usually considered a formal thinking procedure. Ethics is grounded in reason. Many times ethics relates to law and legal behavior. Ethics can deal with actions. Ethics tend to remain unchanged over time. Ethics is based on morals or values.

What is the difference between ethics and morals? Morals tend to be more personal. Morals tend to be abstract. Morals tend to deal with thought or beliefs. The word "values" might be easier to understand. Morals are grounded in religion, life experience, and family interactions. Morals tend to change as we mature and gain knowledge.

Maybe the simplest definition is the best. If morals is what we should do then ethics is what we must do.

Why study ethics?

Medicine and nursing are unique. How many other professions deal with people in such a personal way? How many other professions can be involved with life and death decisions on a daily basis? How many other professions must act as advocates? How many other professions touch lives every single day? The answer of course, is very few.

As you begin nursing practice you will find ethical decisions are continually encountered in every day patient care. Examining these decisions prior to the actual confrontation may make them easier to understand and maintain. We will now look at several more common dilemmas you may face in nursing practice.

By Joanne Paronett

DNR Orders: Do not resuscitate (DNR) orders are examples of ethical decisions. DNR orders mean that if the patient goes into cardio-respiratory arrest that CPR will not be done. It does not mean that other medical treatments will be withheld. DNR status is usually determined by the patient and or family.

Example: A patient has a DNR order and has a headache. Giving the patient medication for the headache does not violate the DNR orders.

Example: A patient has a DNR order. The patient has been diagnosed with pneumonia. Treating the patient with antibiotics and oxygen by nasal cannula does not violate DNR orders.

Example: You walk in to a patient's room and find them pulseless. You know the patient has a DNR order. You start CPR and call a code. You have now violated the DNR order and there have been cases of a lawsuit when the DNR status has been disregarded.

DNT Orders: Do not transport/transfer orders are usually encountered in the long term care setting. The patient/family has decided that they do not want the patient hospitalized. Sometimes it means that the patient/family does not want what is referred to as "aggressive" treatment. Many times DNR orders will be found on the same patient. You may also see a do not hospitalize (DNH) order which would essentially be the same thing. These mandates may also be important in home care situations. Staying in one's home rather than a nursing home will be more prevalent over the next few years.

Please do not think that DNR or DNT orders are only for the very old. Now is the time when it would be easiest to think of how or when you would make the determination for DNR

orders. What conditions or circumstances would make you not want to continue to live? What conditions or circumstances would cause you to make the judgment for a family member?

Now may a good time to discuss "**quality of life**". It is a term you will hear in your practice and its meaning will be more and more important as medical treatments advance. Quality of life is determined by or for the patient. It is more than just contentment with a state of existence. Psychological and physiological factors must be considered. It is an individual and personal consideration and decision. It is a measurement of such elements such as overall health, pain, mental functioning, and capability. Quality of life determinations will influence DNR or DNT choices.

Example: Your patient is a 40 year old man who has a progressive terminal neurological disease. He can speak with difficulty. He can make most of his wishes known. His extremities are in continual spasm. He is confined to a wheelchair. Despite his age he has decided to have a DNR order. How does this make you feel?

Example: The brother of the above patient comes to see him in the hospital. The brother has not seen the patient in years. The brother says he wants everything done for the patient and does not believe in DNR orders. How might you respond? Who could you call for help? Who makes the ultimate choice?

Take a look back at the term **competency** in Part 1.

Let's look at this idea from another point of view.

Medical treatments have improved greatly over history. In times before sterile technique people commonly died after childbirth or simple surgeries. Remember that doctors did not wear gloves or even wash their hands. The use of antibiotics is a fairly recent discovery. People died of routine infections. Surgical procedures that were unheard of in the past are now commonplace. These innovations will allow people to both regain health and be kept alive. Being "kept alive" will present ethical and moral concerns for us to investigate.

Example: A child is born with severe esophageal deformity and trisomy 21(Down syndrome which will result in an impediment for mental functioning). The child needs immediate surgery in order to be fed. The parents refuse. How do you feel now about the decision of the parents? Do you think the parents should be allowed to make that choice?

There are several famous cases that you should be aware of.

Karen Ann Quinlan was admitted to a hospital in 1975. She was 21 years of age. She was unconscious probably from drugs and alcohol. She went into cardio-respiratory arrest. After resuscitation she was placed on a ventilator. Karen was nourished through a feeding tube. Her electroencephalogram (EEG) showed some brain activity. Karen never became responsive. Over the next few months she lost a great deal of weight and her body became stiff. Her father asked the court to have the ventilator discontinued. After much argument on both sides the ventilator

was removed. Karen continued to breathe on her own. The hospital continued feeding Karen. She "lived" for another 10 years finally expiring in 1985.

You can see that the decision of feeding tube insertion should not be taken lightly. Nourishment may keep the patient "alive" but at what cost? There are no easy answers.

Nancy Cruzan was a 25 year old involved in a car accident in 1983. Nancy was severely injured and considered to be in "vegetative state". Nancy had a feeding tube. Three years after the accident her parents requested the tube be removed. The state decided that only the patient could make that choice or that the patient would have had to make their wished clear sometime in the past. It was not until co-workers told the courts that Nancy had stated she did not want to live like Karen Ann Quinlan that the tube was removed. Nancy died 12 days later.

Both these cases deal with "quality of life" as well as withholding or discontinuing medical care. Reflect on how you would feel if you were the nurse taking care of these young women. Could you support the family's decisions?

Terri Schiavo collapsed at the age of 26 in 1990. She suffered a cardiac arrest and was resuscitated after 11 minutes. It was determined that anoxia had caused extensive brain damage. Over time the patient was weaned off the ventilator but a feeding tube remained in place. The patient underwent extensive medical tests that determined she did not comprehend anything or anyone around her and there was no hope for improvement. Terri was able to swallow saliva and had some reflexes. A medical malpractice suit against her previous physician had been filed by her husband. This lawsuit was eventually won by Terri's husband Michael. Sometime after this

Michael requested the feeding tube be removed. This request caused problems between Michael and Terri's parents who wanted the tube to remain. The feeding tube was removed and replaced several times. It was finally determined that Terri would not have wanted to "live" like this and the tube was removed permanently. Terri died in 2005. She was 41 years of age.

Reflect on how you would feel if you were taking care of Terri. How could you be supportive of both her husband and parents? These cases show you how morals and ethics may collide.

How could you prevent this dilemma from happening to you or a loved one?

There are several terms you should become familiar with.

Living Will: This is a written legal document that states what treatments the patient wishes to occur should that patient be unable to make decisions at the time. For example: A person can state that if they do not want a feeding tube inserted or they do not want to be maintained on a ventilator. The person can also state that they do want every medical treatment possible.

Power of Attorney: This is technically known as durable power of attorney. This is a person named by the patient who will make healthcare, or financial choices for that patient if they are unable to.

Health Care Proxy: This is someone named by the patient who can make health care decisions only if the patient is unable to.

Do you have a Living Will? Does your family, loved ones or friends know what life sustaining treatments you wish to occur? Now is the time to at least think about it. The documents we have discussed can be changed at any time as well.

While we are on the subject, let's look at a topic that is somewhat related. Physician assisted suicide (PAS) may be something you will encounter in your practice.

The Oregon Death with Dignity Act was passed in 1994. The law allows for a physician to write a lethal prescription for a terminally ill patient. There are several provisions that must be met in order for the action to occur. The patient must be a resident of the state of Oregon. The prescribing physician and a consulting physician must attest that the patient has been offered other means of comfort such as adequate pain control or hospice care. These physicians must also state that the patient is in fact terminally ill and competent to make this decision. The patient must make an oral and written witnessed request to the prescribing physician and there must be a 15 day waiting period. The doctor does not administer the medication. He/she assists only. The patient must be capable of taking the medication. There are other mandates as well. As of 2005 only 341 patients have expired using this manner of death.

In 2008 the state of Washington passed a similar bill followed by Montana. Several other states have considered comparable actions but these were not passed. Organizations that oppose these laws include the Roman Catholic Church, American Nurses Association, and the American Medical Association.

In states where PAS is sanctioned the physician "assists" only but does not "cause". The role of nursing may be one of educating the patient of the option in states where PAS exists but nurses cannot participate in the act itself. This may change in time.

You may have heard of Dr. Jack Kevorkian. In 1990 Dr. Kevorkian assisted in the suicide of a woman who suffered from Alzheimer's disease. This occurred in Michigan a state that did not have a law banning assisted suicide. Dr. Kevorkian set up an intravenous in the back of a Volkswagen van. The patient triggered the mechanism. Between 1990 and 1998 Dr. Kevorkian was involved in the deaths of as many as 130 patients. These actions caused great debate in Michigan as well as the rest of the country. It was thought that Dr. Kevorkian did more than assist however. It was believed that Dr. Kevorkian euthanized his patients. Euthanasia is illegal in all states. Euthanasia is the active participation in death.

Reflect on how you feel about PAS. If you worked in a state that had the law could you or should you inform your patient of the option? If you had the legal option to actively assist in a patient's death could you?

Nurses still may support the patient in that act of dying. Hospice or palliative care allows nursing to render care and provide a death that is as peaceful and pain free as possible. This care for the terminally ill can occur in the hospital, hospice centers, and at home. The patient's comfort is the most important factor. Aggressive treatment is withheld. Hospice care is generally given up to six months but this is not hard and fast.

Reflect on how you feel about hospice care. Could you participate? Remember that not only old people have terminal illness. How would you feel if the patient was a child?

The Nurses Code of Ethics:

Several nursing organizations have constructed a written code of ethics for nurses. The document published by the American Nurses Association is widely accessible and provides explanations for the various sections. Issues range from matters of privacy, advocacy and informed consent. The text also addresses such concerns as incompetency, impaired practitioners and harassment. This is not a document that you must commit to memory but the Code of Ethics for Nurses presents the basic foundation for practice.

Medical Research:

Ethical or legal medical research is a fairly recent phenomenon. In the past medical students had to rely on grave robbers to provide bodies for dissection. The Catholic Church as the historically dominant religious body forbade the practice. How were physicians expected to learn anatomy? Josef Mengele performed **"experiments"** on concentration camp inmates during World War II. Mengele primarily sought out twins for his "work" on genetics. In recent years genetic manipulation has provided gigantic leaps in medical care. Nurses did what they were told without understanding or thought. Nurses now actively participate in the accumulation of knowledge about their own profession and assist in medical studies.

Medical research is necessary in order to gain understanding and improve patient outcomes. Without such inquires physicians would still be operating without gloves and death from the usual childhood diseases would be commonplace. Nurses may participate in research by monitoring patient responses or given medications. What is the responsibility of the nurse in this activity? First we will again look at recent history.

The Tuskegee Syphilis Experiment

In 1929 and 1930 venereal disease was a major public health concern. "Treatments" included mercury injections as well as other poisons. While some patients improved many became more ill due primarily to the addition of toxins. Patients who received no treatment may have lived for years. The question was why? Why did patients who receive no treatment seem to do better than those who did? What was really going on?

The Tuskegee Experiment was started in Alabama where there was a high proportion of people who had syphilis. Those who were selected for participation received no real therapies. They were observed and monitored. "Treatments" such as spinal taps were done in order to persuade patients to continue. Subjects were never informed about the purpose of the trial. In the early 1940's penicillin was discovered to be an effective treatment for syphilis but was not given to the patients. This study continued until the 1960s until a researcher tried to put an end to it. It was not until the press was notified and became involved that the Tuskegee Experiment came to an end. This researcher could have been considered a "whistleblower" and risked retribution.

What happened here? What were the facts?

First, there was a disease that had no real treatment. That disease was syphilis. Researchers wanted to know what was happening in the body when the disease was permitted to develop (remember "treatments" were poisonous and usually made patients sicker).

The first thing that went wrong was that patients were not informed of the reason for the study. Many patients were uninformed when subjected to medical testing such as spinal taps. These actions were at the very least unethical.

When penicillin came into the picture the situation changed. Penicillin could have been used to treat syphilis. Patients were not only not informed that they had the disease but were not given a medication that that would have halted the progression. Remember the purpose of the study? It was to observe the progression of syphilis without useless or harmful treatments. Now there was a successful medication available. Why was the "experiment" allowed to continue?

Who is guilty of unethical and or illegal practice here? You should be aware that this was a well published study. Medical journals contained the details or procedure and findings. Was everyone who read the articles accountable? Nurses were involved in the Tuskegee Experiment. Did they violate a code of ethics? Were nurses more morally accountable than the researchers? Reflect on this point.

Whistleblowing: What if you were participating or became aware of unethical practice? What if you wanted the actions to stop? What could you do and are you protected?

Many states have whistle blowing laws that protect the individual who is acting in "good faith". There is also legislation at the federal level. These laws basically protect the whistleblower from retaliation.

Example: You are a graduate nurse. You just got your first job and are undergoing orientation. You discover that the education department is falsifying your records to indicate that you have completed given requirements. These documents will permit you to be assigned on your own before adequate training. You feel that this policy may result in unsafe conditions for both you and your patients. What should you do and do you risk being terminated for that action?

First remember that you are ultimately responsible for your actions. If anything negative occurred with a patient for whom you are responsible it will be your license that will be in jeopardy. You will see when we discuss delegation that if you accept an assignment you are accountable.

Bioethics: Bioethics has evolved primarily due to advances in medicine and research. Bioethics will continue to gain importance as medical capabilities increase. Terms like cloning and surrogacy were once only found in science fiction novels. Genetic engineering may become the treatment of choice in the not so far future. How we regulate these advances may cause the human race to prosper or destroy itself. Bioethics carries with it great possibilities for gain or abuse.

Genetic Testing: Genetic testing makes it possible to determine if certain genetic conditions have occurred. Babies may be tested in utero to determine if abnormalities exist. Trisomy 21 (three number 21 chromosomes) would indicate Down Syndrome. Cystic Fibrosis, Tay-Sachs disease, and Sickle cell disease can also be screened for. This ability raises some ethical and moral questions. Should the pregnancy be terminated if the disease would be fatal or result in extreme disabilities for the child? The sex of the child would be easily determined as well. Would it be ethically or morally correct to terminate if one sex was preferred other the other? Reflect on your answers.

How about genetic testing in adults?

Huntington's disease is a progressive terminal neurological disorder. There is no cure. Huntington's disease is caused by a dominant gene. This means that if one parent has the disease then the odds of each child having the condition is 2 chances in 4. Those are pretty good odds. Symptoms usually do not occur until middle adulthood. If you tested positive for the gene you will become ill. The question is would you want to know if you had this extremely destructive disease? If you were positive would you have children? If you were positive could insurance companies refuse you coverage? Would this be considered a preexisting condition even though you had no symptoms at the time? Could a company refuse to hire you? You are not be able to work until normal retirement age.

Consider genetic markers for certain breast cancers. If a patient tested positive for these genes should they undergo bilateral mastectomy with evidence of disease? Would this be considered preventive medicine? Would insurance companies cover a procedure totally based on genetics?

Testing options are advancing rapidly. It would be foolish to think that financial considerations are not driving forces in all aspects of care. Who should make the final decisions? The patient? The insurance companies? Some other governing body?

If you had a history of Huntington's disease in your family how would you react? Would you be tested? Would you choice not to have children that may carry the gene? Would you save for retirement? Would you do nothing?

Cloning: Cloning is not the stuff of sci-fi. It's here now.

What is cloning?

Except for eggs and sperm, each cell in the body contains 23 pairs of chromosomes. Each of these cells is thought to contain all the genetic material about the individual. Experiments have shown that if one of these cells in stimulated and placed in a proper environment it will reproduce to become an exact genetic duplicate of the "parent". Dolly the sheep was the first widely publicized success. Recently companies have advertised the ability to clone a favorite pet for a cost. How can these advances influence medicine and nursing in the years to come? What are the ethical and moral implications?

Have you ever met a set of identical twins? Are they the same person just in duplicate or are they just physically alike? While they may be similar each has their own personality.

Nature versus Nurture: Studies have shown that certain conditions seem to be more based on genetics then others. Autism and schizophrenia appear to have a strong genetic link. That is to say if one twin is autistic the other tends to suffer from the same condition. On the other hand if one twin has a cerebral vascular accident as an adult research has shown that the other is not doomed to the same fate. Outside influences come into play and may be as important as genes. Factors such as anger and stress management may be more learned then inherited and affect overall health.

Let's make it simpler.

Take a moment to think about the possibility. If you had a dog that you loved would you arrange for that dog to be cloned when he became older? Remember you would be receiving a

puppy with the exact genetic makeup of the adult (nature). Could you raise that puppy in the very same way as you did the older dog (nurture)? That would be the only way to assure that you the very same pet as the first.

Another possibility:

What if cloning could be more tightly controlled? What if you could "bank" cells for future use? What if you could take cells and grow them into any organ you may need. The restrictions of mechanical replacements would be history. Organ donation and rejection issues would be a thing of the past. If you knew that you could get a new heart when you wanted would you take any measures to maintain a healthy lifestyle? Reflect on these issues.

Now we get into topics that can create some real moral and ethical dilemmas for nursing. Contraception, abortion, and surrogacy have come to the forefront for not only practitioners. The religious and political fallout is palpable. Knowing the legal ramifications may be very important to your practice.

Important:

If you find that you are morally unable to assist your patient with choices regarding pregnancy it is best to refer the patient to someone else that can. That is the safest and fairest action you can take. This is in keeping within the scope of practice.

Contraception:

Contraception employs various methods to prevent pregnancy. These approaches can be mechanical (condoms, barrier creams), pharmological (birth control pills) or surgical procedures which can be performed on the male or female. These techniques can prevent inception but most

are not 100% guaranteed. Birth control pills carry with them certain risks as well. If you worked in an obstetric office or clinic you would need to be aware of these options. If you found the idea of contraception morally abhorrent you probably would not be able to inform your patients of their rights and choices and should seek other employment. Teaching is an important nursing function. You cannot offer your opinion as to what is right or wrong.

Surrogacy:

Surrogacy has only come to the forefront in the past few years. A fertilized egg is implanted in a woman and allowed to proceed to grow. The fertilized egg can be several combinations of donors. Surrogacy is desirable if the woman is unable to carry a pregnancy to term or is unable or unwilling to conceive.

What would you think in these examples?

Example: A woman chooses surrogacy when she finds her uterus is malformed.

Example: A movie star chooses surrogacy as she does not want to risk spoiling her figure.

Remember that while you cannot offer your opinion you may have a moral conflict. Reflect on these issues.

Abortion:

Most people have an opinion on this topic. Many have moral constraints about participation in the procedure. In most cases these moral restraints are sanctioned except in the case of an emergency where the mother's life is at risk. Needless to say if you had strong moral

limitations for abortion you should not work for a facility that provided the procedure on a regular basis. Knowing where you stand morally will undoubtedly act as a guide.

The states vary widely in relation to when legal termination of pregnancy can occur. It is certainly not the responsibility of every nurse to know all restrictions and regulations that exist.

The Morning After Pill:

The Morning After Pill is a combination of hormones that is taken orally hours to a few days after intercourse. The medication blocks implantation of the ovum and thus prevents pregnancy. The controversies occur from two points. The first objection is that the some believe that "life" begins at fertilization. The Morning After Pill may prevent a fertilized egg from maturing. Those who are strongly against abortion may find this aspect objectionable.

The second problem is who has access to the medication. In most states the Morning After Pill is over the counter. The patient need not have a prescription. Age regulations and the need for teaching are just some of the considerations. Should a fourteen year old be permitted to obtain the medication? Must the pharmacist inform the patient of the possibility for severe abdominal cramping and bleeding? May the pharmacist only provide written instructions? Who determines if the patient can read? These are only a few of the associated controversies.

Summary:

Knowing where you stand on ethical and moral issues prior to their actual encounters will at least prevent some negative interactions. Placing yourself in situations where you may have moral conflicts can be avoided. Remember that your opinion on any given issue should usually not be given. If you find a topic or treatment morally objectionable it is best to refer the patient to someone who can provide the information without bias.